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ABSTRACT

Due to increasing attacks on school curriculum and policies, administrators must understand the law associated with education and religion. Guided by this knowledge, school leaders can foster an educational environment while simultaneously protecting individual expression. If a lawsuit occurs, an administrator can best protect both the school and student plaintiffs by knowing educational law and constitutional rights, appreciating individual perspectives, recording all incidents of dispute, determining insurance policy coverage, cooperating with the media, learning from the experience, and maintaining great concern for plaintiffs. The Lemon Test and the Cherry Hill decision will guide educators in implementing activities and curricula consistent with the First Amendment. Individual religious expression is protected by the U.S. Constitution and by the 1993 Religious Freedom Restoration Act. The 1984 Equal Access Act allows secondary school students to hold religious club meetings during noninstructional times on public school grounds. According to 1996 White House guidelines, individual students can pray and read a religious text alone; students can wear (nondisruptive) religious symbols; teachers can educate about religion and its role in art, philosophy, and music; officials cannot organize prayer sessions during school hours; and schools cannot allow prayers at graduation ceremonies. Included are 22 references. (MLH)

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Practical Guide to Church and State Issues Involving Public Education

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U.S. DEPARTMENT OF EDUCATION
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Introduction

American schools, in the 21st century, will be continue to be confronted with a plethora of social issues culminating in the expansion of responsibilities and roles associated with classroom educators. In today's society, teachers are not only passing on knowledge and skills but also performing a variety of tasks similar to those traditionally engaged in by psychologists, police officers or social workers. The erosion of American society can be witnessed by the increased presence of guns, violence, student apathy as well as less parental involvement in schools. Realities such as these have facilitated school leaders to attempt the process of implementing preventative as well as therapeutic measures into school policy. An example of this trend is expressed by Samual G. Freedman in Small Victories:

> Horace Mann, Henry Barnard, and other founders of the common school movement could not have imagined the social situation of the schools in the 1980's.....How could they have foreseen the social disintegration that would force upon the school the role of parent, minister, police [officer], social worker, psychiatrist and baby-sitter?" (p. 5)

Here Freedman identifies the roles which are increasingly becoming obligatory for school staff members due to an increase in the number of societal ills affecting the school community. Interestingly, Freedman uses the role of minister to demonstrate this trend. Indeed Freedman acknowledges the reality of what is occurring in the public school of the 1990's and will continue into the 21st century. Moral decline has forced the issues of morals and religion into the societal agenda for education. Although there exists a constitutional separation of church and state, issues of religion are alive and well in the public school.

With this visible increase in violence and social erosion, certain sectors of the community such as right leaning Christian conservatives have become motivated to make an increased effort to

implement their ideology into the school curriculum. Consistently throughout the 1990's, issues related to religion have manifested themselves in conflict and attacks on public school policy. During the 1990's, the state of California witnessed a majority of concerns issued by parents to be related to religion. The 1990's saw over 20 percent of challenges to curriculum related to religious conflict while another 20 percent were related to Satanism and witchcraft (Adler, 1996). In 1993, these composite values were as high as 50 percent. In addition, the American Library Association reported 760 attacks, in 1994, on books and other school related materials (Turock, 1996). Furthermore, the Nexis database (Mead Data Central) found close to 20,000 articles relating to religion and school issues in 1995 - 96 (Sorenson, 1996). Administrators must be prepared to negotiate with parents on religious issues due to the reality of a potential attack on curriculum and school policy.

Since the end of World War II, 500 new national religious organizations have been formed; 300 of these societies and agencies have come into being since 1960 (Scribner & Fusarelli, 1996). In addition, there are over 289 official religious denominations in the United States (Adler, 1996). With this increase in the formation of religious organizations, must come the increase in administrator preparation for curriculum confrontation based on religious rationale. This increase in activity has led to the emergence of the National Christian Right (NCR) as a powerful fundamentalist lobby. In contrast, liberal traditions of schools in America have left administrators unguarded against confrontation with such groups as conservative Christians with religious issues (Cibulka, 1996). Due to the large number of potential attacks on school curriculum and policies, administrators must have access to and experience with the law associated with education and religion. By understanding the law, administrators will prepare themselves with the cultural and

historical foundations associated with religion in the schools. With this knowledge as a guide, school leaders can proceed with the mission of providing an educational environment while simultaneously protecting individual expression. With this in mind, I offer these guidelines for administrators, in order for them to better engage in the issues related to religion in the schools.

GUIDELINES FOR EFFECTIVE ADMINISTRATIVE PRACTICE

The following guidelines are constructed in a manner such that feasible questions are asked and answers are provided with historical United States Supreme Court cases applied for justification purposes. As you read consider future applications of these case's decision and how the Supreme Court utilized the First and Fourteenth Amendments. In addition, continually ask yourself questions. Can this happen in 1997? 2005? How does this decision or right of the student relate to other activities in the school? What current school activities could be altered or eliminated due to the constitutional rights of individuals based on religion? While reading these cases keep in mind that court decisions are continually being tried and decisions which affect education occur quite frequently. I suggest reading educational journals related to school law on a frequent basis.

First, consider the event that your school is actually taken to court. How can you best protect the school while simultaneously protecting the student involved in the challenge? In the event you or your school are taken to court on the issue of school policy consider the following guidelines (Jones, 1996):

- Know the Law - As stated earlier, knowledge of educational law and constitutional rights can defuse potential confrontations due to preventive practice. If you have questions, consult a legal expert.
- Appreciate individual perspectives - As an administrator you have the obligation to protect the

rights of your students. Although some objections may jeopardize the continuation of traditional activities if these actions are infringing on individual rights, then these activities must cease.

- Record all incidents of dispute - If you have to go to court, accurate records will assist in determining the truth and what is indeed just. Being a scribe by recording all incidents, conversations, and actions dealing with the conflict is vital to insure detail and accuracy.
- Determine your insurance policy coverage - Obviously, if your school district will not lose money in a high profile law suit then discontent is minimized in regard to the school board and community.
- Don't evade the media - If you don't provide the facts to the media, they will obtain a story form other sources. From a public relations standpoint, cooperation yields a positive image. In addition, through the process of discussing the issues, the truth will ordinarily emerge.
- Utilize the lawsuit as a learning experience - Engaging in litigation can allow you to defuse potential problems in the future as well as open up avenues for discussion in the classrooms of your school district.
- Maintain great concern for your young plaintiffs - Attempt to assure fairness being applied to the student(s) involved in the lawsuit. If the case threatens to abolish tradition it is quite obvious angry individuals could take justice into their own hands. Take the opportunity to open the issue up for discussion in an effort to allow objectors to vent their discontent in a positive forum. Otherwise, this venting process could take on the form of violence.

By following the above guidelines an administrator should assist in upholding truth, justice as well as honor. Legal situations based on religion often force a school leader into a position of "taking sides" to win community favor. As the administrator, you have obligations to the community

as well as the student, parent, or taxpayer who is voicing discontent. Although difficult, maintaining a neutral stance can provide the best case scenario. Realistically many of these situations end in a no win situation for the administrator. By following the above stated guidelines, an administrator can facilitate the best ending by minimizing the discontent of all those involved.

HOW CAN I JUDGE ACTIVITIES TO BE CONSTITUTIONAL?

The First Amendment to the U.S. Constitution states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." This amendment in tandem with the Fourteenth Amendment are the basis of the decision making process in regard to religion in public schools. The Fourteenth Amendment reads "[n]o state shall make or enforce any law which shall abridge the privileges.....of citizens." Through these statements of citizens rights, students have the right to religious expression while the school can neither support nor enforce a religious stance. If these two rights are upheld then the action or activity is constitutional. At times, determining whether activities are constitutional is difficult at best. Since many cases have been decided in this arena in the past, we have the Supreme Court to aid in determining constitutional merit. The Supreme Court has been utilizing a three question test, since 1971, to determine if school functions are constitutional in regard to religious activities. In Lemon v. Kurtzman, the "Lemon test" was born. Chief Justice Burger explains the criteria (Lemon v. Kurtzman, 1971):

> Every analysis in this area must begin with consideration of the cumulative criteria developed by the Court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion..... finally the statute must not foster an excessive government entanglement with religion.

Clearly within this statement lies the criteria to determine whether or not the Establishment Clause has been violated. To satisfy the constitution an activity's:

1) objective must be distinctly and clearly secular ;

2) principal effect must be secular, neither promoting or hindering religion; and

3) relationship must separate government and religion.

As stated above, administrators should know the law. By following the Lemon test, a rational and intellectual conversation can commence at the initial point of discontent. Utilizing these questions as a guide can often pilot a decision-making process prior to the issue acting as a catalyst for increased confrontation. If you have questions, consult a legal consultant immediately. By acting quickly, you avoid the possibility of not being prepared for future attacks. Be aware that individuals who have political or social agendas will continue the legal process. Issues can be in clear violation of the constitution yet these opponents (e.g. the Christian right) want their philosophy mandated in the schools.

RELIGION IN THE CURRICULUM

Prior to 1963, twelve states and the District of Columbia maintained required Bible readings in their curriculum. The church and state, has only recently, been truly separated. Several Constitutional decisions in 1963 (e.g. Murray, Engel and Schempp) clearly demonstrated that school designated and mandated religious exercises in a curriculum were unconstitutional. Yet, as the opinion of Schempp shows, the court presented a message to schools that religion could be included without violation of constitutional rights:

> It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such a study of the Bible or of religion, when presented objectively as part of a secular program of education, may

> not be effected consistently with the First Amendment. (School District of Abington v. Schempp (1963) in Sorenson,1996, p. 296).

It appears from this quotation that the Supreme Court indicated to the school populace that religious study was consistent with the Establishment Clause when religion was presented in a secular fashion. Yet how do we determine if a course or activity is consistent with a secular cause? Charles Haynes offers some advice on this issue (Haynes, 1991):

- Verify that the teacher's intent is academic and not devotional.
- Verify that the teacher is emphasizing awareness and tolerance but not acceptance of a religion.
- Verify that your school sponsors study about religion but not the practice of religion.
- Verify that your school exposes students to the diversity of religious beliefs yet doesn't impose those belief structures on students.
- Verify that the teacher is exposing students to many(all) religions and doesn't ridicule any of these religious views.
- Verify that exposure to any religion doesn't seek to conform students to that belief.

Through these guidelines an administrator can promote the importance of understanding and accepting differences while remaining consistent with First Amendment privileges. If you are interested in implementing a religious study component to your present curriculum the following organizations will offer curriculum suggestions and guidelines (Haynes, 1991):

- **National Council on Religion and Public Education** - NCPRE, N162 Lagomarcino Hall, Iowa State University, Ames, IA 50011.
- **The First Liberty Institute at George Mason University** - First Liberty Institute at George Mason University, Robinson Hall, # 3307, 4400 University Dr., Fairfax, VA 22030.

- **World Religions Curriculum Development Center** - World Religions Curriculum Development Center, St. Louis Park Public Schools, Minneapolis, MN 55426
- **American United Research Foundation** - AURF, 900 Silver Spring Ave., Silver Spring, MD 20910
- **The National Endowment for the Humanities** - National Endowment for the Humanities, 1100 Pennsylvania Ave., NW, Room 802, Washington, D.C. 20506

In addition to the above resources is the American Civil Liberties Union (ACLU) web page for religious liberty located at http://www.aclu.org/issues/religion/creche.html. Included on the site is the document "Religion in the Public Schools: A Joint Statement of Current Law." This documents specifies religious actions which can be conducted in schools which are supported by law. "Religion in the Public Schools" was signed by 35 Christian, Islamic, Hindu, and Jewish leaders. In addition to this document, the ACLU religious liberty web page has a religion in the schools on-line quiz as well as information, bulletin and links to information about religion in the schools.

RECENT DECISIONS TO CONSIDER - RELIGIOUS SYMBOLS IN THE CLASSROOM

Recent Supreme court decisions have resulted in a reconsideration of status quo operations in school policy. In Washegesic v. Bloomingdale Public Schools, the 6th Circuit Court decided that a painting of Jesus Christ, the "Head of Christ" by Warner Sallman, violated all three prongs of the "Lemon Test" because it was placed alone in a hallway and served no secular education purpose in the school. This picture had hung in the hallway for thirty years. In Clever v. Cherry Hill Township Board of Education, the court decided that the school had satisfied the "Lemon Test" with their school policy of "The Use of Cultural, Ethnic, or Religious Themes in Our Education Program."

Cherry Hill schools began to maintain a calendar with national, ethnic, cultural and religious holidays in order to encourage cultural understanding and tolerance. In each square of the calendar a date of a certain worship day or holiday included an appropriate religious symbol. In addition, these calendars were hanging in each elementary school and religious symbols could also be placed next to the calendar by the teacher yet this was not mandated. School policy dictated that if a teacher decided to display one religious symbol it had to be accompanied by other religious symbols.

These two court decisions demonstrate to school administrators that religious symbols in schools must coexist with other religious symbols. In addition, these symbols must serve a secular education purpose. As is shown in the Washegesic case, lone symbolic religious symbols are not acceptable in the public school. A program which promotes religious understanding and tolerance is allowed. This program must provide for a focus upon many religions.

RELIGIOUS FREEDOM RESTORATION ACT OF 1993

Religious freedom in the United States has been fiercely protected in our country. The Establishment Clause of the First Amendment protects our fundamental and guaranteed right of religious expression which allows for diversity and difference among our people. "The First Amendment has erected a wall between church and state. We could not approve the slightest breach." (Everson v. Board of Education of Ewing Township, 1947). Yet recent Supreme Court decisions have seriously placed individual religious expression in jeopardy. In Employment Division v. Smith, in 1990, the Supreme Court ruled that unemployment benefits could be withheld from two Native Americans who had been terminated from their employment for smoking peyote. Use of peyote, a hallucinogenic, is a vital and fundamental action of the Native American Church's religious ceremony. This decision, in essence, voided the "compelling interest" test formulated in Wisconsin

v. Yoder, in 1972. With this decision, the government needed now only to prove that a policy was applied universally and didn't discriminate denominationally. Yoder protected individual religious expression if it was: 1) sincere and; 2) didn't place a burden on the state.

In 1993, in response to the decision in Smith, Congress passed the Religious Freedom Restoration Act because "the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests" (Shannon, 1996, p. 326). This passage has seemingly replaced the importance of Yoder in regard to decisions based in school policy. In Cheema v. Thompson, three students were prohibited from wearing ceremonial knives on school property. Since Cheema children were baptized as Khalsa Sikhs, according to their belief structure, wearing a "kirpan", a knife shaped similar to a dagger, is vital to religious expression. Daily wearing of these ceremonial knives prevented them from attending school when the school banned the knives. The Ninth Circuit, considering the RFRA. stated that the school had not demonstrated that the daggers presented a threat to the safety of other students as the school had claimed. Religious expression was again protected.

These cases indicate that individual religious expression is protected by the Constitutional rights of the individual and now the Religious Freedom Restoration Act. As an administrator, an individual must be cautious in adhering to school policy. Procedural due process rights play a vital role in this process. When an individual has violated school policy they must be informed of the charges against them as well as the possible outcomes of their alleged infringement of school policy. They have the right to a hearing. This is where an administrator should advise the school board. If this individual expresses a concern regarding religious expression then great care should be

integrated in the decision making process. The RFRA and recent court decisions should have made this crystal clear to administrators.

EQUAL ACCESS ACT

Congress, in 1984, passed the Equal Access Act providing secondary school students with the right to hold religious club meetings during non-instructional times on public school grounds. In Westside Community Schools v. Mergens, the Supreme Court upheld the constitutionality of this act, in 1990. Included in this act are the provisions for religious clubs to use all modes and methods of communication that other groups have access to in the school. These modes of communication can include the school newspaper, intercom system, bulletin boards, etc. When schools allow groups to meet before and after school as well as during recess and lunch, the school creates an open forum as noted in the Equal Access Act. Therefore these groups can meet during these times of non-instruction. In addition, during these times the religious group can pray, read a religious text, etc. In order to protect your school against improper governmental support of a religious group, staff may not direct, initiate or participate in these meetings. Yet an individual staff member may attend in order to guarantee safety.

CONCLUSION

In conclusion, I would like to maintain the premise that an administrator has a responsibility to maintain a keen eye on judicial changes in regard to religion in the public school. When deciding on a particular activity, the Lemon Test in collaboration with the Cherry Hill decision will guide an administrator and teachers in implementing activities and curriculum which are consistent with the First Amendment. In addition, decisions based on religious expression must consider the re-emergence of the "compelling interest" test in Yoder through the recently enacted Religious Freedom

Restoration Act.

Furthermore, the recently released White House guidelines on religion is schools can assist the questioning administrator (White House, 1996). These are as follows:

- Individual students can pray, read a religious text alone.
- Students can wear items which connote a religious theme; yet this items must not disrupt school activities.
- Teachers can educate about religion and its role in art, history, philosophy, music, etc.
- Officials of the school can educate about religious holidays but these holidays can not be observed officially by the school.
- Officials of the school can't organize prayer sessions during the hours a school is in session.
- Students can distribute religious material to other students in the manner which literature can be disseminated. Schools can not regulate dissemination against one particular group or denomination.
- Currently, schools can't allow prayers at a graduation ceremony. Yet legislation continues today on this issue.

Simply stated, if administrators demonstrate a secular utilization of religion in the curriculum while simultaneously protecting sincere religious expression, then your protection level has been maximized. When in doubt, contact your district lawyer as well as an educational law text.

REFERENCES

Adler, L. (1996). Institutional Responses: Public School Curriculum and Religious Conservatives in California. Education and Urban Society, 28, (3), 327 - 346.

American Civil Liberties Union, Church and State[on-line], ACLU Briefing Paper, 3, Available: http:// www. aclu. org/ library/ pbp3. html

Cheema v. Thompson, 1994 WL 477725, at 5 (9th Cir. 1994).

Clever v. Cherry Hill Township Board of Education, 838 F. Supp. 929 (D.N.J. 1993).

Cibulka, J. G., (1996). Afterword: Interpreting the Religious Impulse in American Schooling. Education and Urban Society, 28, (3), 378 - 387.

Engel v. Vitale, 370 U.S. 421, 431 (1962).

Employment Div., Oregon Dept. of Human Resource v. Smith, 494 U.S. 872 (1990).

Everson v. Board of Education of Ewing Township, 330 U.S. 1, 67 S. Ct. 504 (1947).

Freedman, S. G., (1990). Small Victories: the real world of a teacher, her students, and their high school. New York: Harper & Row.

Haynes, C. C., (1991). A Teacher's Guide to Study About Religion in Public School. Journal of Law & Religion, 8, 297 - 308.

Lemon v. Kurtzman, 403 U.S. 602, 91 S. Ct. 2105 (1971).

Murray v. Curlett, 374 U.S. 203, 83 S. Ct. 1560 (1963).

School District of Abington Township v. Schempp, 374 U.S. 203 (1963).

Scribner, J.D. & Fusarelli, L.D. (1996). Rethinking the Nexus Between Religion and Political Culture: Implications for Educational Policy. Education and Urban Society, 28,(3), 279 - 292.

Shannon, J. P. (1996). Taking a Few Bricks Off the Wall: The Effect of Three Recent Cases

on Separation of Church and State. Journal of Law and Education, 24, (3), 323 - 328.

Sorenson, G. (1996). Religion and American Public Education: Conservative Religious Agendas and the U.S. Constitution. Education and Urban Society, 28,(3), 293 - 307.

State of Wisconsin v. Yoder, 406 U.S. 205, 92 S. Ct. 1526 (1972).

Turdock, B.J. (1996). Locked Out. The American School Board Journal, 183,(10), 31 - 33.

Washegesic v. Bloomingdale Public Schools, 33 F 3d 679 (6th Cir. 1994).

Westside Community School v. Mergens, (1990).

White House Issues Guide on Religion. (1996). Executive Education, , (10), 8 - 9.